



U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536

Public Copy

B52

NOV 29 2000

File: EAC 99 112 53458 Office: Vermont Service Center Date:

IN RE: Petitioner:  
Beneficiary:

Petition: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(A)

IN BEHALF OF PETITIONER:

Identifying data deleted to  
prevent clearly unwarranted  
disclosure of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

*Mary C. Mulrean*

Mary C. Mulrean, Acting Director  
Administrative Appeals Office

NOV 29 2000 - 0261203

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained and the petition will be approved.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(A), as an alien of extraordinary ability in the arts. The director determined the petitioner had not established that he qualifies as an alien of extraordinary ability in his field of endeavor.

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. 204.5(h)(2).

An alien, or any person on behalf of the alien, may file for classification under section 203(b)(1)(A) of the Act as an alien of extraordinary ability in science, the arts, education, business, or athletics. Neither an offer of employment nor a labor certification is required for this classification.

The specific requirements for supporting documents to establish that an alien has achieved sustained national or international acclaim are set forth in the Service regulations at 8 C.F.R. 204.5(h)(3). The relevant criteria will be discussed below. It should be reiterated, however, that the petitioner must show that the beneficiary has sustained national or international acclaim at the very top level.

The petitioner is a cinematographer and video photographer. The petitioner claims to be "the most well-known cinematographer, or film photographer and director of photography for films and video productions in China."

The regulation at 8 C.F.R. 204.5(h)(3) presents ten criteria for establishing sustained national or international acclaim, and requires that an alien must meet at least three of those criteria unless the alien has received a major, internationally recognized award. Review of the evidence of record establishes that the petitioner has in fact met three of the necessary criteria.

*Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.*

The petitioner was the cinematographer for [REDACTED] which in turn was nominated for an Academy Award for Best Foreign Language Film. There is no indication that the cinematography in particular was singled out for special recognition. There exists a separate Academy Award for Best Cinematography.

The petitioner has, however, won several awards for photography, the majority of them at the Beijing International Television Documentary Festival between 1992 and 1998. The evidence of record indicates that these awards are at least nationally significant. Thus, the petitioner satisfies this criterion.

*Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.*

The petitioner is a member of the China TV Artists Association. The petitioner submits an unsigned document from the association, which counsel claims sets forth the membership requirements. The document does not, in fact, specify what criteria one must fulfill to qualify for membership. The document does, however, state:

The TV artists' Associations in each province, autonomous region and municipality are the organizational members on China TV Artists' Association, recruiting their own members in local areas.

Thus, members are selected not by "recognized national or international experts," but rather by the members of local subdivisions of the national association. Thus, this membership does not meet the plain wording of the criterion.

Published materials about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

Counsel cites an article from Exakt, a German-language magazine published in Switzerland. The article mentions the petitioner only once; the subject of the article is the filming of a television documentary.

The petitioner is the chief subject of an article in The World Journal, which counsel describes as "the most influential Chinese language newspaper published in the United States." Such a newspaper cannot constitute major media because its readership is necessarily limited to the comparatively small fraction of U.S. readers who understand the Chinese language.

Articles in the Chinese publications China Youth Daily and News Weekly mention the petitioner, both in conjunction with the documentary film The Shooting of Ju Dou. The petitioner has submitted only partial translations of the articles, but the articles appear to be largely the above-named documentary film. The petitioner produced this documentary, and thus an article about the film which also specifies his contribution can be said to be "about the alien . . . relating to the alien's field of work." This evidence cannot satisfy the regulatory criterion without documentation to show that the publications in question are in fact "major media."

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

The petitioner sat on the adjudication committees of the China Folk Songs and Classical Music Competition in 1997, and the China Golden Eagle Awards in 1996. The petitioner's work on these committees appears to conform to the intent of the regulation.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

The petitioner has submitted several letters from witnesses, attesting to the significance of the petitioner's artistic contributions. For example, Shi Gao, Asian Representative for Paramount E.T. Asia Entertainment Group (Asian distributor of the television program Entertainment Today), states that the petitioner "is one of the most outstanding and accomplished artist[s] in film and TV photography coming out of China in recent years."

Actor [REDACTED] who has played a leading role in the Broadway production of Miss Saigon since 1994, states "[f]or many years, [the petitioner] has been probably the most accomplished and recognized movie cameraman and director of photography in China."

[REDACTED] director of such acclaimed films as Red Sorghum and the Academy Award-nominated [REDACTED] notes that he was the petitioner's schoolmate at the Beijing Film Academy and has worked frequently with the petitioner since that time. [REDACTED] credits the petitioner with major contributions to [REDACTED] which Mr. Zhang states he "could not have accomplished . . . without [the petitioner's] input. [REDACTED] asserts that the petitioner has "produced many significant documentaries," and that his "films and video productions have won many awards."

[REDACTED] associate professor at Columbia University and a filmmaker since the 1960s, states that the petitioner "is noted for his work . . . in collaboration with [REDACTED] adding that "[t]he work from [REDACTED] and [the petitioner] has been the focus of attention in the international movie scene for some time and represents the best that contemporary China has to offer to the world."

*Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.*

The petitioner has written two articles published in Winds, a Chinese-language publication issued by Beijing-based H.K. and Macau International Trust & Investment Co., Ltd. There is no evidence regarding the reputation or circulation of this magazine, and no indication that the petitioner's two articles are "scholarly" in nature.

*Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.*

Counsel observes that the petitioner's work has appeared at several film festivals. The petitioner has not established that the work of the cinematographer received special attention at these festivals. Many individuals contribute to making any given film, from the director and actors to the make-up and lighting crews to the editor and foley artists who enhance the film post-production.

*Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.*

Counsel asserts that the petitioner "is one of the five people representing Beijing Television Station of China and China Global Public Relations Co. to produce a documentary film on Switzerland

at the invitation of Switzerland Tourism," and that the petitioner "was one of the persons engaged by Hong Kong Commercial Newspaper Co. to produce a documentary film in Hong Kong." Counsel asserts that, by so doing, the petitioner "was playing a leading role" for the three named entities. The petitioner certainly provided a service for these entities, but it does not follow that he played a leading or critical role. Because the petitioner has never been an employee, let alone an officer, of those entities, he obviously did not have a leading role. The documentaries were not central functions of the entities, but rather a form of publicity. The petitioner has not shown that, as a cinematographer for these documentaries, he played a critical role for the entities named. Providing a service for which one is under contract is not identical to playing a critical role.

The director denied the petition, asserting that the petitioner has not submitted sufficient evidence to set the petitioner apart from others in the field. The director repeatedly stressed the absence of evidence that the petitioner is among the highest-paid cinematographers in China. On appeal, the petitioner submits additional witness letters, the most notable of which is from Evan Lottman, editor of several feature films including [REDACTED] and [REDACTED] (for which he received an Academy Award nomination). [REDACTED] states:

I do not know [the petitioner] personally. But I feel compelled to write this letter of reference . . . because I believe that he is a first-rate cinematographer, after seeing much of his camera work and reviewing his professional resume. . . . [The petitioner's] work stands out on its own merit. It is no wonder that he has won many international awards.

While the petitioner has not documented a high salary for his work, high remuneration is not a critical requirement to establish sustained national or international acclaim. It is only one of the ten regulatory criteria, and the petitioner can establish eligibility by credibly meeting any three of those criteria with evidence that establishes the requisite national or international acclaim. In this instance, the petitioner has documented that he has received lesser national prizes, judged the work of others, and made original contributions of major significance. The petitioner has also submitted published material about himself and his work, although with neither the required full translation nor evidence that the publications carrying the articles constitute major media. Had the petitioner submitted such evidence to meet the wording of the regulation, he would have satisfied a fourth criterion.

In review, while not all of the petitioner's evidence carries the weight imputed to it by the petitioner or by counsel, the petitioner has established that he has been recognized as an alien

of extraordinary ability who has achieved sustained national acclaim and whose achievements have been recognized in his field of expertise. The petitioner has established that he seeks to continue working in the same field in the United States, and prominent witnesses in the field maintain that his entry into the United States will substantially benefit prospectively the United States. Therefore, the petitioner has established eligibility for the benefits sought under section 203 of the Act.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has sustained that burden.

**ORDER:** The decision of the director is withdrawn. The appeal is sustained and the petition is approved.